

114TH CONGRESS
2D SESSION

S. 2867

To amend the Securities Exchange Act of 1934 to establish an Office of the Advocate for Small Business Capital Formation and a Small Business Capital Formation Advisory Committee, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 27, 2016

Ms. HEITKAMP (for herself, Mr. HELLER, and Mr. PETERS) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Securities Exchange Act of 1934 to establish an Office of the Advocate for Small Business Capital Formation and a Small Business Capital Formation Advisory Committee, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “SEC Small Business
5 Advocate Act of 2016”.

1 **SEC. 2. ESTABLISHMENT OF THE OFFICE OF THE ADVO-**
2 **CATE FOR SMALL BUSINESS CAPITAL FORMA-**
3 **TION AND THE SMALL BUSINESS CAPITAL**
4 **FORMATION ADVISORY COMMITTEE.**

5 (a) **OFFICE OF THE ADVOCATE FOR SMALL BUSI-**
6 NESS **CAPITAL FORMATION.**—Section 4 of the Securities
7 Exchange Act of 1934 (15 U.S.C. 78d) is amended by
8 adding at the end the following:

9 “(j) **OFFICE OF THE ADVOCATE FOR SMALL BUSI-**
10 NESS **CAPITAL FORMATION.**—

11 “(1) **OFFICE ESTABLISHED.**—There is estab-
12 lished within the Commission the Office of the Advo-
13 cate for Small Business Capital Formation (in this
14 subsection referred to as the ‘Office’).

15 “(2) **ADVOCATE FOR SMALL BUSINESS CAPITAL**
16 **FORMATION.**—

17 “(A) **IN GENERAL.**—The head of the Of-
18 fice shall be the Advocate for Small Business
19 Capital Formation, who shall—

20 “(i) report directly to the Commission;
21 and

22 “(ii) be appointed by the Commission,
23 from among individuals having experience
24 in—

25 “(I) advocating for the interests
26 of small businesses; and

1 “(II) encouraging small business
2 capital formation.

3 “(B) COMPENSATION.—The annual rate of
4 pay for the Advocate for Small Business Cap-
5 ital Formation shall be equal to the highest rate
6 of annual pay for other senior executives who
7 report directly to the Commission.

8 “(C) NO CURRENT EMPLOYEE OF THE
9 COMMISSION.—An individual may not be ap-
10 pointed as the Advocate for Small Business
11 Capital Formation if the individual is employed
12 by the Commission at the time of the appoint-
13 ment.

14 “(3) STAFF OF OFFICE.—The Advocate for
15 Small Business Capital Formation, after consulta-
16 tion with the Commission, may retain or employ
17 independent counsel, research staff, and service
18 staff, as the Advocate for Small Business Capital
19 Formation determines to be necessary to carry out
20 the functions of the Office.

21 “(4) FUNCTIONS OF THE ADVOCATE FOR
22 SMALL BUSINESS CAPITAL FORMATION.—The Advo-
23 cate for Small Business Capital Formation shall—

24 “(A) assist small businesses and small
25 business investors in resolving significant prob-

1 lems that the businesses and investors may
2 have with the Commission or with self-regu-
3 latory organizations;

4 “(B) identify areas in which small busi-
5 nesses and small business investors would ben-
6 efit from changes in the regulations of the
7 Commission or the rules of self-regulatory orga-
8 nizations;

9 “(C) identify problems that small busi-
10 nesses have with securing access to capital, in-
11 cluding any unique challenges faced by minor-
12 ity-owned and women-owned small businesses;

13 “(D) analyze the potential impacts on
14 small businesses and small business investors
15 of—

16 “(i) proposed regulations of the Com-
17 mission that are likely to have a significant
18 economic impact on small businesses and
19 small business capital formation; and

20 “(ii) proposed rules that are likely to
21 have a significant economic impact on
22 small businesses and small business capital
23 formation of self-regulatory organizations
24 registered under this title;

1 “(E) conduct outreach to small businesses
2 and small business investors, including through
3 regional roundtables, in order to solicit views on
4 relevant capital formation issues;

5 “(F) to the extent practicable, propose to
6 the Commission changes in the regulations or
7 orders of the Commission and to Congress any
8 legislative, administrative, or personnel changes
9 that may be appropriate to—

10 “(i) mitigate problems identified
11 under this paragraph; and

12 “(ii) promote the interests of small
13 businesses and small business investors;

14 “(G) consult with the Investor Advocate on
15 proposed recommendations made under sub-
16 paragraph (F); and

17 “(H) advise the Investor Advocate on
18 issues related to small businesses and small
19 business investors.

20 “(5) ACCESS TO DOCUMENTS.—The Commis-
21 sion shall ensure that the Advocate for Small Busi-
22 ness Capital Formation has full access to the docu-
23 ments and information of the Commission and any
24 self-regulatory organization, as necessary to carry
25 out the functions of the Office.

1 “(6) ANNUAL REPORT ON ACTIVITIES.—

2 “(A) IN GENERAL.—Not later than De-
3 cember 31 of each year beginning in 2016, the
4 Advocate for Small Business Capital Formation
5 shall submit to the Committee on Banking,
6 Housing, and Urban Affairs of the Senate and
7 the Committee on Financial Services of the
8 House of Representatives a report on the activi-
9 ties of the Advocate for Small Business Capital
10 Formation during the immediately preceding
11 fiscal year.

12 “(B) CONTENTS.—Each report required
13 under subparagraph (A) shall include—

14 “(i) appropriate statistical information
15 and full and substantive analysis;

16 “(ii) information on steps that the
17 Advocate for Small Business Capital For-
18 mation has taken during the reporting pe-
19 riod to improve—

20 “(I) small business services; and

21 “(II) the responsiveness of the
22 Commission and self-regulatory orga-
23 nizations with respect to small busi-
24 nesses and small business investor
25 concerns;

- 1 “(iii) a summary of the most serious
2 issues encountered by small businesses and
3 small business investors, including any
4 unique issues encountered by minority-
5 owned and women-owned small businesses
6 and investors in those small businesses,
7 during the reporting period;
- 8 “(iv) an inventory of the items sum-
9 marized under clause (iii), including—
- 10 “(I) items summarized under
11 that clause for any prior reporting pe-
12 riod—
- 13 “(aa) on which no action
14 has been taken; or
- 15 “(bb) that have not been re-
16 solved to the satisfaction of the
17 Advocate for Small Business
18 Capital Formation as of the be-
19 ginning of the reporting period
20 covered by the report;
- 21 “(II) identification of any action
22 taken by the Commission or the self-
23 regulatory organization and the result
24 of the action;

1 “(III) the length of time that
2 each item has remained on the inven-
3 tory; and

4 “(IV) for items on which no ac-
5 tion has been taken—

6 “(aa) the reasons for the in-
7 action; and

8 “(bb) an identification of
9 any official who is responsible for
10 taking action;

11 “(v) recommendations for legislative
12 actions and changes to the regulations,
13 guidance, and orders of the Commission
14 that may be appropriate to—

15 “(I) resolve problems with the
16 Commission and self-regulatory orga-
17 nizations encountered by small busi-
18 nesses and small business investors;
19 and

20 “(II) encourage small business
21 capital formation; and

22 “(vi) any other information, as deter-
23 mined appropriate by the Advocate for
24 Small Business Capital Formation.

1 “(C) CONFIDENTIALITY.—No report re-
2 quired under subparagraph (A) may contain
3 confidential information.

4 “(D) INDEPENDENCE.—Each report re-
5 quired under subparagraph (A) shall be pro-
6 vided directly to the committees of Congress
7 listed in that subparagraph without any prior
8 review or comment from the Commission, any
9 commissioner, any other officer or employee of
10 the Commission, or the Office of Management
11 and Budget.

12 “(7) REGULATIONS.—The Commission shall es-
13 tablish procedures requiring a formal response to all
14 recommendations submitted to the Commission by
15 the Advocate for Small Business Capital Formation,
16 not later than 3 months after the date of the sub-
17 mission.

18 “(8) GOVERNMENT-BUSINESS FORUM ON SMALL
19 BUSINESS CAPITAL FORMATION.—The Advocate for
20 Small Business Capital Formation shall be respon-
21 sible for planning, organizing, and executing the an-
22 nual Government-Business Forum on Small Busi-
23 ness Capital Formation described in section 503 of
24 the Small Business Investment Incentive Act of
25 1980 (15 U.S.C. 80c–1).

1 “(9) RULE OF CONSTRUCTION.—Nothing in
2 this subsection may be construed as replacing or re-
3 ducing the responsibilities of the Investor Advocate
4 with respect to small business investors.”.

5 (b) SMALL BUSINESS CAPITAL FORMATION ADVI-
6 SORY COMMITTEE.—Title I of the Securities Exchange
7 Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding
8 at the end the following:

9 **“SEC. 40. SMALL BUSINESS CAPITAL FORMATION ADVISORY**

10 **COMMITTEE.**

11 “(a) DEFINITIONS.—In this section—

12 “(1) the term ‘Committee’ means the Small
13 Business Capital Formation Advisory Committee es-
14 tablished under subsection (b);

15 “(2) the term ‘emerging companies’ means
16 emerging, privately held small businesses;

17 “(3) the term ‘IPO’ means initial public offer-
18 ing; and

19 “(4) the term ‘smaller public companies’ means
20 publicly traded companies with less than
21 \$250,000,000 in public market capitalization.

22 “(b) ESTABLISHMENT AND PURPOSE.—

23 “(1) ESTABLISHMENT.—There is established
24 within the Commission the Small Business Capital
25 Formation Advisory Committee.

1 “(2) FUNCTIONS.—

2 “(A) IN GENERAL.—The Committee shall
3 provide the Commission with advice on the
4 rules, regulations, and policies of the Commis-
5 sion with regard to the mission of the Commis-
6 sion of protecting investors, maintaining fair,
7 orderly, and efficient markets, and facilitating
8 capital formation, as those rules, regulations,
9 and policies relate to—

10 “(i) capital raising—

11 “(I) by—

12 “(aa) emerging companies;

13 and

14 “(bb) smaller public compa-
15 nies; and

16 “(II) through securities offerings,
17 including—

18 “(aa) private and limited of-
19 ferings; and

20 “(bb) initial and other pub-
21 lic offerings;

22 “(ii) trading in the securities of
23 emerging companies and smaller public
24 companies; and

1 “(iii) public reporting and corporate
2 governance requirements of emerging com-
3 panies and smaller public companies.

4 “(B) LIMITATION.—The Committee shall
5 not provide any advice with respect to any poli-
6 cies, practices, actions, or decisions concerning
7 the enforcement program of the Commission.

8 “(c) MEMBERSHIP.—

9 “(1) IN GENERAL.—The members of the Com-
10 mittee shall be—

11 “(A) the Advocate for Small Business Cap-
12 ital Formation;

13 “(B) not fewer than 10, and not more than
14 20, members appointed by the Commission,
15 from among individuals who—

16 “(i) represent emerging companies en-
17 gaging in private and limited securities of-
18 ferings or considering an IPO, including
19 the officers and directors of the emerging
20 companies;

21 “(ii) represent the professional advi-
22 sors of emerging companies, including—

23 “(I) attorneys;

24 “(II) accountants;

25 “(III) investment bankers; and

1 “(IV) financial advisors;

2 “(iii) represent the investors in emerg-

3 ing companies, including—

4 “(I) angel investors;

5 “(II) venture capital funds; and

6 “(III) family offices;

7 “(iv) are officers or directors of mi-

8 nority-owned small businesses and women-

9 owned small businesses;

10 “(v) represent smaller public compa-

11 nies, including the officers and directors of

12 the companies;

13 “(vi) represent the professional advi-

14 sors of smaller public companies, includ-

15 ing—

16 “(I) attorneys;

17 “(II) auditors;

18 “(III) underwriters; and

19 “(IV) financial advisors;

20 “(vii) represent the pre-IPO and post-

21 IPO investors in smaller public companies,

22 which include investors that are—

23 “(I) institutional, such as venture

24 capital funds; and

1 “(II) individual, such as angel in-
2 vestors; and

3 “(viii) represent participants in the
4 marketplace for the securities of emerging
5 companies and smaller public companies,
6 including—

7 “(I) securities exchanges;
8 “(II) alternative trading systems;
9 “(III) analysts;
10 “(IV) information processors;
11 and
12 “(V) transfer agents; and

13 “(C) 3 non-voting members—

14 “(i) 1 of whom shall be appointed by
15 the Investor Advocate;

16 “(ii) 1 of whom shall be appointed by
17 the North American Securities Administra-
18 tors Association; and

19 “(iii) 1 of whom shall be appointed by
20 the Administrator of the Small Business
21 Administration.

22 “(2) TERM.—Each member of the Committee
23 appointed under subparagraph (B), (C)(ii), or
24 (C)(iii) of paragraph (1) shall serve for a term of 4
25 years.

1 “(3) MEMBERS NOT COMMISSION EMPLOY-
2 EES.—Members appointed under subparagraph (B),
3 (C)(ii), or (C)(iii) of paragraph (1) shall not be
4 treated as employees or agents of the Commission
5 solely because of membership on the Committee.

6 “(d) CHAIRMAN; VICE CHAIRMAN; SECRETARY; As-
7 SISTANT SECRETARY.—

8 “(1) IN GENERAL.—The members of the Com-
9 mittee shall elect, from among the members of the
10 Committee—

- 11 “(A) a chairman;
- 12 “(B) a vice chairman;
- 13 “(C) a secretary; and
- 14 “(D) an assistant secretary.

15 “(2) TERM.—Each member elected under para-
16 graph (1) shall serve for a term of 3 years in the
17 capacity for which the member was elected under
18 paragraph (1).

19 “(e) MEETINGS.—

20 “(1) FREQUENCY OF MEETINGS.—The Com-
21 mittee shall meet—

- 22 “(A) not less frequently than 4 times an-
23 nually, at the call of the chairman of the Com-
24 mittee; and

1 “(B) from time to time, at the call of the
2 Commission.

3 “(2) NOTICE.—The chairman of the Committee
4 shall give the members of the Committee written no-
5 tice of each meeting, not later than 2 weeks before
6 the date of the meeting.

7 “(f) COMPENSATION AND TRAVEL EXPENSES.—
8 Each member of the Committee who is not a full-time em-
9 ployee of the United States shall—

10 “(1) be entitled to receive compensation at a
11 rate not to exceed the daily equivalent of the annual
12 rate of basic pay in effect for a position at level V
13 of the Executive Schedule under section 5316 of title
14 5, United States Code, for each day during which
15 the member is engaged in the actual performance of
16 the duties of the Committee; and

17 “(2) while away from the home or regular place
18 of business of the member in the performance of
19 services for the Committee, be allowed travel ex-
20 penses, including per diem in lieu of subsistence, in
21 the same manner as persons employed intermittently
22 in the Government service are allowed expenses
23 under section 5703 of title 5, United States Code.

1 “(g) STAFF.—The Commission shall make available
2 to the Committee such staff as the chairman of the Com-
3 mittee determines is necessary to carry out this section.

4 “(h) REVIEW BY COMMISSION.—The Commission
5 shall—

6 “(1) review the findings and recommendations
7 of the Committee; and

8 “(2) each time the Committee submits a finding
9 or recommendation to the Commission, promptly
10 issue a public statement—

11 “(A) assessing the finding or recommenda-
12 tion of the Committee; and

13 “(B) disclosing the action, if any, the Com-
14 mission intends to take with respect to the find-
15 ing or recommendation.

16 “(i) FEDERAL ADVISORY COMMITTEE ACT.—The
17 Federal Advisory Committee Act (5 U.S.C. App.) shall not
18 apply with respect to the Committee and the activities of
19 the Committee.”.

20 (c) ANNUAL GOVERNMENT-BUSINESS FORUM ON
21 SMALL BUSINESS CAPITAL FORMATION.—Section 503(a)
22 of the Small Business Investment Incentive Act of 1980
23 (15 U.S.C. 80c-1(a)) is amended by inserting “, acting
24 through the Office of the Advocate for Small Business
25 Capital Formation and in consultation with the Small

- 1 Business Capital Formation Advisory Committee," after
- 2 "Securities and Exchange Commission".

○